

IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA

JERMOL D. GENTRY,	)	
JOE W. CAREY, II,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Case No. CIV-14-310-W
	)	
LAWTON CORRECTIONAL	)	
FACILITY/WARDEN	)	
RIOS,	)	
	)	
Defendants.	)	

**REPORT AND RECOMMENDATION**

Pro se inmates Jermol Gentry and Joe Carey initiated a complaint under 42 U.S.C. § 1983 alleging that Defendants violated their constitutionally protected rights. Doc. 1. United States District Court Judge Lee R. West referred this matter to the undersigned Magistrate Judge for proceedings consistent with 28 U.S.C. § 636(b)(1)(B), (C). The undersigned recommended that the court dismiss Plaintiff Carey without prejudice on grounds of infeasible joinder, Doc. 18, and the court adopted the recommendation and dismissed Plaintiff Carey. Doc. 19. The undersigned now recommends that the court dismiss the action based on Plaintiff Gentry's failure to make an initial partial filing fee payment.

## **I. Analysis.**

After the court dismissed Plaintiff Carey, the undersigned granted Plaintiff Gentry's application for leave to proceed in forma pauperis and ordered him to make an initial partial filing fee payment of \$48.71. Doc. 20. Plaintiff did not comply. The undersigned cautioned Plaintiff that failure to make a payment would likely result in the action's dismissal, and extended his deadline to make the \$48.71 payment to July 29, 2014. Doc. 21. Again, Plaintiff failed to comply. So, the undersigned recommends that the court dismiss Plaintiff's action without prejudice to refiling. *See* LCvR3.3(e) ("Failure to pay the filing fees by the date specified, to seek a timely extension within which to make the payment, or show cause in writing by the date specified for payment shall be cause for dismissal of the action without prejudice to refiling."); *see also* LCvR3.4(a); *Freeman v. Colo. Dep't of Corrs.*, 396 F. App'x 543, 543-44 (10th Cir. 2010) (affirming the district court's dismissal of inmate's complaint after plaintiff failed to "pay the initial partial filing fee" or "show cause why she could not pay the fee").

## **II. Recommendation and notice of right to object.**

For the reasons set forth above, the undersigned recommends that the court dismiss the complaint without prejudice. Adoption of the recommendation will moot the "Motion for a 'Declaration' of Transference," Doc. 17, which Plaintiff Gentry and Plaintiff Carey filed jointly before

Plaintiff Carey's dismissal, and will terminate the referral in the present case.

Plaintiff Gentry is advised of his right to file an objection to the report and recommendation with the Clerk of this Court by the 4th day of September, 2014, in accordance with 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b)(2). Plaintiff Gentry is further advised that failure to make a timely objection to the report and recommendation waives the right to appellate review of both factual and legal questions contained herein. *See Moore v. United States*, 950 F.2d 656, 659 (10th Cir. 1991).

ENTERED this 15th day of August, 2014.



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SUZANNE MITCHELL  
UNITED STATES MAGISTRATE JUDGE